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## 1. THE HISTORY OF WHALING

Since more or less the 12th century, at the extreme north of Europe, whalers were not very concerned about the survival of the world's largest mammals. From the 16th to the 20th century, many whaler communities around Europe and America had almost no mercy with the cetaceans that lived in those areas, over-fishing of one area after another and of one species of whale after another. <sup>2</sup>

With the whale population decreasing, the whaling industry was forced to regulate the practice. Thus, in 1946, with the goal of preserving the whales and still allowing them to be hunted, the IWC created a domino effect: when one species was almost extinct, another species was chosen to be hunted and, of course, after years of this all species were becoming extinct. <sup>3</sup>

The main purpose of whaling at those times was for whale oil because it was the major source of lighting fuel.

Japan started hunting whales after the restored Meiji oligarchy removed the band on leaving the home islands. The difference between whaling practiced in Europe and America and that practiced in Japan was tremendous: the two continents used whale oil as fuel, whereas Japan used the whale as a source of food. <sup>4</sup>

However, during the same era, many people in other areas used whales for survival purposes. Those were the so-called *aboriginal* people living in the far north of the globe. For them, whaling was not only crucial to their livelihood, but it also was a matter of local culture. <sup>5</sup>

Everything started to change when the Norwegians discovered using an explosion grenade harpoon was much more efficient.

## 2. THE INTERNATIONAL CONVENTIONS TO REGULATE WHALING BEFORE THE IWC

By the 1930's, the whaling situation was critical. The harvest was too high, and some states were willing to enter into an international convention to regulate whaling.<sup>6</sup> On September 24, 1931, a convention in Geneva was the first modern effort toward managing whales,<sup>7</sup> establishing whaling seasons, prohibiting the taking of female whales accompanied by calves, and establishing size limits, as stipulated in Article V:

### Article V

"The taking or killing of calves or suckling whales, immature whales, and female whales which are accompanied by calves (or suckling whales) is prohibited."

This convention was used not only to preserve the mammals, but also to solve the overproduction issue since it is estimated that in 1930 alone, around 30,000 whales were killed. In 1938 a protocol was signed banning the taking of humpback whales and creating a sanctuary in the Pacific sector of the Antarctic waters.

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<sup>2</sup> Preamble of the International Convention for the Regulation of Whaling – Washington DC, December 2, 1946.

<sup>3</sup> Pick-upau Environmental Agency. *Baleias: Por que protegê-las?* (Free translation: "Whales: Why protect them?"). Sources: Greenpeace and Cetacea. (2001). (<http://www.pickupau.org.br/mundo/baleias/baleias.htm>).

<sup>4</sup> FREEMAN, Milton M. R. *The International Whaling Commission, Small-Type Whaling, and Coming to Terms with Subsistence*. Human Organization 52. No. 3. (1993): 243-51

<sup>5</sup> YOUNG ET AL., Oran R., *Subsistence Sustainability and Sea Mammals: Reconstructing the International Whaling Regime*, Ocean and Coastal Management 23 (1994).

<sup>6</sup> FRIEDHEIN, Robert L. *Toward a Sustainable Whaling Regime*. Whales and Whaling; A short Story. University of Washington Press, Seattle and London and Canadian Circumpolar Press, Edmonton. (2001).

<sup>7</sup> *Idem, Ibidem*.

With the Second World War, the importance of the whaling commissions was left behind, but in 1944, a new protocol created an overall quota, measured in blue whale units (BWU): a new unit to measure what each country could catch.

At this time, Japan was interested only in providing food to its postwar population. The Allied Powers allowed Japan to temporarily hunt whales in the Antarctic. By 1965, Japan was taking almost 27,000 whales a year. Until 1963, the Japanese consumed more whale meat than other kind.

The Antarctic and Arctic whaling regions were always a serious point of concern since those areas had the highest incidence of the largest whales around the globe (this was the case for the Blue Whale, Fin Whale, Sei Whale and the Humpback Whale).

### 3. THE INTERNATIONAL WHALING COMMISSION (IWC)

The International Whaling Commission was established in Washington D.C. on December 2, 1946, under the *International Convention for the Regulation of Whaling* (ICRW). It was decided to sign it in the USA because, as new postwar leader, it felt an obligation to assist other growing countries and also because oil hunting was over.

The main purposes of the ICRW is to *"ensure proper and effective conservation and development of whale stocks"* and *"thus make possible the orderly development of the whaling industry"*.<sup>8</sup> It governs the commercial, scientific, and aboriginal subsistence whaling practices of seventy-seven member nations.

The major policy tool of the IWC is a Schedule through which the Commission could regulate whaling by, among other measures, specifying (1) protected and unprotected species; (2) open and closed seasons; (3) open and closed waters (including sanctuaries); (4) size limits for each species; (5) time, methods, and intensity of whaling; and (6) gear restriction.<sup>9</sup>

Currently, member nations of the IWC are:

Antigua & Barbuda	Brazil	Croatia
Argentina	Cambodia	Cyprus
Australia	Cameroon	Czech Republic
Austria	Chile	Denmark
Belgium	China, People's Rep of	Dominica
Belize	Costa Rica	Ecuador
Benin	Côte d'Ivoire	Finland

<sup>8</sup> Preamble of the International Convention for the Regulation of Whaling – Washington D.C., December 2nd, 1946.

The complete preamble states: *"Recognizing the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks; Considering that the history of whaling has seen over-fishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further over-fishing; Recognizing that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases in the number of whales which may be captured without endangering these natural resources; Recognizing that it is in the common interest to achieve the optimum level of whale stocks as rapidly as possible without causing widespread economic and nutritional distress; Recognizing that in the course of achieving these objectives, whaling operations should be confined to those species best able to sustain exploitation in order to give an interval for recovery to certain species of whales now depleted in numbers; Desiring to establish a system of international regulation for the whale fisheries to ensure proper and effective conservation and development of whale stocks on the basis of the principles embodied in the provisions of the International Agreement for the Regulation of Whaling, signed in London on 8th June, 1937, and the protocols to that Agreement signed in London on 24th June, 1938, and 26th November, 1945; and Having decided to conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry"*.

<sup>9</sup> Article V (1), ICRW.

France	Rep of Laos	Russian Federation
Gabon	Luxembourg	San Marino
The Gambia	Mali	St. Kitts & Nevis
Germany	Marshall Islands	St. Lucia
Greece	Rep of Mauritania	St. Vincent & the Grenadines
Grenada	Mexico	Senegal
Guatemala	Monaco	Slovak Republic
Guinea-Bissau	Mongolia	Slovenia
Guinea	Morocco	Solomon Islands
Rep of Hungary	Nauru	South Africa
Iceland	The Netherlands	Spain
India	New Zealand	Suriname
Ireland	Nicaragua	Sweden
Israel	Norway	Switzerland
Italy	Oman	Togo
Japan	Palau	Tuvalu UK
Kenya	Panama	USA
Kiribati	Peru	
Korea	Portugal	

In 1986, IWC members voted to enter into a moratorium on all commercial whaling, allowing two exemptions: scientific whaling and aboriginal whaling. The subsequent history of whaling is similar to the history of the IWC, its agenda, and its meetings.

#### 4 . CONSERVATION AND MANAGEMENT OF WHALE STOCKS

There are thirteen species of great whales<sup>10</sup> listed by the IWC which are divided into several stocks. Since the beginning of the 20th century until recent times many of them had been depleted by overexploitation and some are seriously heading toward extinction. Fortunately, many of these are showing signs of increase since their protection. According to the Commission's understanding, *"whales, like any other animal population, have a natural capacity for increase and a natural rate of mortality. A stock remains more or less in equilibrium at its initial level because these two factors balance one another. If the number of whales in a stock is reduced then recruitment increases, possibly as a result of greater food availability, by higher pregnancy rates, earlier maturation, increased survival rates or a combination of these factors."*<sup>11</sup>

Taking the characteristics mentioned above as a basis, in 1975 the IWC adopted a new management policy for whales, which had as goal *"to bring all stocks to the levels providing the greatest long-term harvests, by setting catch limits for individual stocks below their sustainable yields"*.<sup>12</sup>

However, uncertainties in the scientific analyses, mainly because of the difficulties to obtain accurate and complex data, and the absence of precise status of the varied whale stocks made the IWC decide at its meeting in 1982 that there would be a moratorium, i.e. a pause in commercial whaling on all whale stocks from 1985/86. Subsequently, a Revised Management Procedure (RMP) was developed by the IWC Scientific Committee, which was accepted and endorsed in 1994 but was not implemented. According to the Commission, *"this balances the somewhat conflicting requirements to ensure that the risk to individual stocks is not seriously increased, while allowing the highest continuing yield. It is an important step in the development of wildlife resource management in that it takes into account the inevitable scientific uncertainty and requires only relatively*

<sup>10</sup> IWC website. *Lives of Whales*. (<http://www.iwcoffice.org/conservation/lives.htm#great> ).

<sup>11</sup> IWC website. *IWC Information*. – "Conservation and Managment". (<http://www.wcoffice.org/commission/iwcmain.htm#conservation>)

<sup>12</sup> *Idem, Ibidem*.

*simple to obtain information (knowledge of population size, past and present catches, and stock identity).*<sup>13</sup> The IWC is currently examining ways to complete a Revised Management Scheme (RMS) that incorporates scientific aspects of management (the RMP) with those designed to ensure that regulations are obeyed.

As mentioned, the Convention granted two exemptions to the moratorium: aboriginal whaling and scientific whaling. The pause in commercial whaling did not affect the former, which continues being practiced and is permitted *“in Denmark (Greenland, fin and minke whales), the Russian Federation (Siberia, gray whales), St. Vincent and The Grenadines (humpback whales), and the USA (Alaska, bowhead and occasionally off Washington, gray whales).*<sup>14</sup>

#### **4.1 . Revised Management Scheme (RMS) and Revised Management Procedure (RMP)**

The Revised Management Scheme (RMS) basically consists of scientific data from the RMP and procedures for inspection and observation.

Until 1982, the year the moratorium was adopted, the New Management Procedure (NMP) had been in force since 1974. The following year, 1983, the IWC Scientific Committee established a work group to prepare the comprehensive assessments<sup>15</sup> required for the moratorium decision and to jointly propose improvements to the existing NMP.

Aiming to replace the New Management Procedure (NMP), shortly after the moratorium entered into effect in 1986, the aforementioned Committee was commissioned to draw up a new management procedure known as the Revised Management Procedure (RMP). The new procedure had as core *“a quota calculation method which takes uncertainty fully into account. The larger the uncertainty surrounding important biological data (such as stock size), the smaller the quota allocated. The management procedure also requires whaling nations to monitor stocks by means of surveys, which are to be carried out every six years. If they fail to do this, the quotas allocated are reduced, ultimately to zero.*<sup>16</sup>

Finally in 1994 the IWC approved the Revised Management Procedure (RMP), but it also decided not to put it into effect until an inspection and observation scheme could be developed, with everything in place to ensure that agreed catch limits were not exceeded. This mix of scientific (RPM) and non-scientific factors were the composition of the Revised Management Scheme.

According to the IWC, the current RMP implementation in whale management, even for those stocks for which it has been tested, is a political decision. *“The Commission will not set catch limits for commercial whaling until it has agreed and adopted a complete Revised Management Scheme (RMS). Any RMS will not only include the scientific aspects such as the RMP, but a number of non-scientific issues, including inspection and enforcement, perhaps to humaneness of killing techniques.*<sup>17</sup>

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<sup>13</sup> *Idem, Ibidem.*

<sup>14</sup> *Idem, Ibidem.*

<sup>15</sup> In 1982, when was established the moratorium by the IWC, the amendment to the regulations included a clause that the Commission will undertake a *comprehensive assessment* of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits. As the term “Comprehensive Assessment” had not been defined by the Commission, eventually the Scientific Committee defined it to be: *“an in-depth evaluation of the status of all whale stocks in the light of management objectives and procedures... that ... would include the examination of current stock size, recent population trends, carrying capacity and productivity”.* (IWC website. *Whale Population Estimates. – “Comprehensive Assessment”.* (<http://www.iwcoffice.org/conservation/estimate.htm#assessment>).

<sup>16</sup> High North Alliance website. *Revised Management Scheme.* (<http://www.highnorth.no/iwc2000/Briefings/RMS.htm>)

<sup>17</sup> IWC website. *Revised Management Procedure. – “The Revised Management Scheme”.*(<http://www.iwcoffice.org/conservation/rmp.htm>)

Nowadays, given this scientific advance which has been accepted by the Commission, some countries have often tried pressure to remove the moratorium for certain stocks of whales. However, following the moratorium, *“the Scientific Committee recognized the need to develop management objectives and procedures that learnt from its previous difficulties and in particular recognized the limitations of both the data it had and the data it was likely to obtain.”*<sup>18</sup>

## 5. CURRENT SITUATION

On July 23, 1982, the IWC decided<sup>19</sup> by the necessary three-fourths majority of votes to implement a moratorium in commercial whaling, according to the following paragraph related to the schedule: *“Notwithstanding the other provisions of paragraph 10, catch limits for the killing for commercial purposes of whales from all stocks for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. This provision will be kept under review, based upon the best scientific advice, and by 1990 at the latest the Commission will undertake a comprehensive assessment of the effects of this decision on whale stocks and consider modification of this provision and the establishment of other catch limits”*<sup>20</sup>

Several factors were involved in this decision, including the *“difficulties in agreeing what catch limits to set for non-protected species (due to scientific uncertainties in the information needed to apply the management procedure then in place) and differing attitudes to the acceptability of whaling.”*<sup>21</sup> Now, the former whaling countries do not want to follow a sustainable whaling regime anymore; they want to use a preserving whaling regime.

Moreover, as it is known, the Convention grants two exemptions to the moratorium: scientific whaling<sup>22</sup> and aboriginal whaling.<sup>23</sup>

As previously mentioned, several nations such as Denmark, Russia, St. Vincent, The Grenadines and the USA are whaling under aboriginal whaling permits and auspices in certain areas.

Since the moratorium was not based on the advice of the IWC Scientific Committee, some whaling countries such as Japan, Norway, Peru and Russia (the former Soviet Union) lodged objections before the Commission

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<sup>18</sup> IWC website. *Revised Management Procedure*. – *“The Revised Management Procedure (RPM)”*. (<http://www.iwcoffice.org/conservation/rmp.htm>)

<sup>19</sup> The moratorium passed with 25 votes against 7 votes, and 5 abstentions. The countries voting in favor of the moratorium included Antigua, Australia, Belize, Costa Rica, Denmark, Egypt, France, Germany, India, Kenya, Mexico, New Zealand, Oman, St. Lucia, St. Vincent, Senegal, the Seychelles, Spain, Sweden, the United Kingdom and the United States. The seven countries voting against the measure were Brazil, Iceland, Japan, Norway, Peru, South Korea and the USSR. Chile, China, the Philippines, South Africa and Switzerland abstained.

<sup>20</sup> *International Whaling Commission Schedule*, item 10(e).

<sup>21</sup> IWC website. *Revised Management Scheme*. – *“The ‘Moratorium’”*. (<http://www.iwcoffice.org/conservation/rms.htm>)

<sup>22</sup> Article VIII, paragraph 1 of the ICRW: *“Notwithstanding anything contained in this Convention, any Contracting Government may grant to any of its nationals a special permit authorizing that nation to kill, take, and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit and the kill, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of the Convention.”*

<sup>23</sup> The IWC perceives that aboriginal subsistence whaling *“is of a different nature to commercial whaling. This is reflected in the different objectives for the two. For aboriginal subsistence whaling these are to: (i) ensure risks of extinction not seriously increased (highest priority); (ii) enable harvests in perpetuity appropriate to cultural and nutritional requirements; and (iii) maintain stocks at highest net recruitment level and if below that ensure they move towards it.”*

negating the use of it in commercial whaling. Shortly after, Japan and Peru withdrew their objections, but this did not mean changing position for whaling commercially practiced.

In 1992, Iceland, also an assumed whaling country, followed the group of unsatisfied countries and withdrew from the IWC. Then in 2002, Iceland decided to rejoin the Commission with a reservation toward the moratorium, but until now this reservation is not recognized as a valid objection by Argentina, Australia, Brazil, Chile, Finland, France, Italy, Germany, Mexico, Monaco, Netherlands, New Zealand, Peru, Portugal, San Marino, Spain, Sweden, the UK and the USA. However, Iceland has not faced legal impediments nor has been challenged by any of these countries, and even began hunting commercially in 2006 under the allegation that whaling has belonged to its culture since long ago.

Additionally, in 1992 Norway lodged a protest against the premise of the moratorium which consists of zero catch limits, and since 1994, availing itself of its objection; Norway has been whaling commercially based on the same argument from Iceland: whaling is cultural.

Japan has been whaling under scientific research permits since the moratorium started. Thus, anti-whaling countries started accusing Japan's scientific whaling as being a way to continue commercial whaling and to supply whale meat. The Japanese government argues that it is whaling for scientific purposes based on criterion of whale head count as a measure of recovery of whale species, alleging insufficient data and therefore justifying their continuing studies with focus on sex and age of population distributions. In addition, the IWC regulations specifically require that whale meat obtained by scientific whaling cannot be wasted. However, the anti-whaling nations often refuse to accept this line of reasoning.

Furthermore, Japan has lodged an objection against the USA aboriginal subsistence whaling in retaliation against anti-whaling nations' (mainly the USA) objection to adopt the aboriginal subsistence whaling for several Japanese fishing communities that traditionally hunted whales before the imposition of the moratorium.

After the moratorium decision, *“the IWC Scientific Committee embarked on a major review of the status of whale stocks (including an examination of current stock size, recent population trends and productivity) which it called the Comprehensive Assessment. At the outset of its work on this, the Scientific Committee recognized the need to develop management objectives and procedures that learn from its previous difficulties, and in particular recognized the limitations of both the data it had and the data it was likely to obtain. It spent over eight years developing the Revised Management Procedure, a scientifically robust method of setting safe catch limits for certain stocks (groups of whales of the same species living in a particular area) where the numbers are plentiful.”*<sup>24</sup>

Currently, a large majority of the IWC members believes that the moratorium is insufficient by itself, needing a Revised Management Scheme, composed of detailed efforts to avoid over-fishing. Some states are already trying to encourage the Commission to create some kind of control over small cetaceans, even away from native people, that by law have the right to catch whales, depending on the case.

### 5.1 . The Position of Pro-whaling Nations

Beyond the pressure of anti-whaling countries to deter scientific research whaling, the largest and most serious example of disregard for the ICRW is definitely the commercial whaling moratorium.

The preamble of the Convention states that one of its objectives is *“to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry.”* So the Convention is not for the total protection of whales, but in fact it is a pact which proposes to ensure the sustainable use of whale resources. In other words, the maintenance of whale resources and concomitantly the development of the whaling industry are two main pillars of the whaling pact.

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<sup>24</sup> IWC website. *Revised Management Scheme*. – *“The Comprehensive Assessment and the Revised Management Procedure (RMP)”*. (<http://www.iwcoffice.org/conservation/rms.htm>)

Since the U.N. Conference on Human Environment in 1972, when the IWC repeatedly rejected the United States proposal for a commercial moratorium alleging lack of scientific evidence, the USA had used a strategy which consisted in recruiting many new member countries to the IWC in which their sole aim was to cooperate in anti-whaling votes.

Thus, it is clear that *“the commercial whaling moratorium was rammed through by a majority vote at the IWC, but it was made without the support of recommendations from the Scientific Committee. Of the Convention's objectives of preserving whale stock and development of the whaling industry with the sustainable use of whale resources, only the former is being upheld and this bias obviously goes against the spirit of the ICRW.”*<sup>25</sup>

In sum, the anti-whaling countries have the position that all whales should be protected independent of the status of the whale stock, but this advice is contrary to the objective and wording of the Convention. Those members of the IWC which are opposed to the sustainable use of whale resources and which try to impose their views are subverting the purpose of the ICRW and have caused the dysfunction of the IWC. *“Their position is contrary to scientific finding and the widely accepted principle of sustainable use. It is also anti-environment since it ignores the role of whales in the ecosystem.”*<sup>26</sup>

## 5.2. The Position of Anti-whaling Nations

Around 1970 the first focus of the global anti-whaling movement began. In 1972, a proposal to implement a ten-year pause in commercial whaling, aiming at recovery of whale stocks was adopted by the U.N. Conference on the Human Environment.

In 1977 and 1981, the Convention on International Trade of Endangered Species used its reports to identify and spread a list with several species of whales in danger of extinction. Finally, the 1982 U.N. Law of the Sea Convention laid down that *“states shall cooperate with a view to the conservation of marine mammals and in the case of whales shall in particular work through the appropriate international organizations for the conservation, management and study.”*<sup>27</sup>

Beyond the fact that the whale population was critically decreasing, the reason for the IWC's adoption of commercial moratorium in 1982 was that there were uncertainties in the data needed for whale stock management. Thus, anti-whaling scientists asserted that it was not possible to achieve optimum stock management based on uncertain data, insisting that a moratorium would be necessary until accurate data was calculated through computer analysis.

The moratorium had been objected to by many countries for years, and in particular by those which were pro-whaling, such as Norway, Japan and Iceland. When the moratorium entered into effect, Japan and Norway apparently halted their commercial whaling, and under the provision for scientific whaling (exemption of the moratorium), they began to hunt whales for scientific research purposes. However, since 1994, Norway had abandoned the claim of 'science' and has assumed its 'commercial' goals, being allowed to do so by the IWC members because it lodged an official objection against the moratorium at its start. Iceland was *a priori* under the moratorium effect, but in 1992 it decided to quit the IWC, frustrated with commercial whaling prohibition; it

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<sup>25</sup> Japan Whaling Association. *Subsistence whaling and research whaling*. (1993): 32.

<sup>26</sup> Japanese Fishery Agency website. *Share our philosophy with you. – “Objectives of the IWC”*. (<http://www.jfa.maff.go.jp/whale/assertion/assertion.htm>)

<sup>27</sup> Article 65 of the Convention on the Law of the Sea: *“Nothing in this Part restricts the right of a coastal State or the competence of an international organization, as appropriate, to prohibit, limit or regulate the exploitation of marine mammals more strictly than provided for in this Part. States shall co-operate with a view to the conservation of marine mammals and in the case of cetaceans shall in particular work through the appropriate international organizations for their conservation, management and study.”*

rejoined in 2002. *“Meanwhile, both Japan and Iceland continue kill whales under the guise of scientific research and in accordance with Article VIII of the ICRW, but sell the meat commercially.”*<sup>28</sup>

In addition, Japan’s whaling industry was often accused of recruiting and bribing poor nations with no whaling tradition, mainly Caribbean Island countries, for IWC votes. Environmentalists believe there may be another reason behind some those countries' sudden interest in whales: *“millions of dollars worth of Japanese aid, delivered in sake-sipping ceremonies and used to pay for roads, schools and other desperate needs.”*<sup>29</sup>

## 6. REVIEW OF BRAZILIAN STATEMENTS

By analyzing Brazilian statements before the IWC, it is possible to conclude that its participation was effectively registered since 1998 under the subject of “whale sanctuary.” Before this, its activity was limited only by the simple presence of restrictions to formalities .

It is important to know that each year since 1998, Brazil has proposed a South Atlantic Whale Sanctuary (hereinafter referred to as “SAWS”) that has still not gotten the three-quarter majority votes to be approved.

### 6.1. 50th Annual Meeting of the IWC (1998)

Despite other issues such as preservation of whale stocks and scientific committee resolutions, Brazil's participation in the 50th Annual Meeting of the IWC was more relevant when the discussion about the creation of a Southern Ocean Sanctuary proposal took place in the agenda of the meeting.

Since 1995 a Commission Work Group recommended that the Scientific Committee request advice from the Commission about the commonly agreed objectives for the Southern Ocean Sanctuary. Moreover, the Commission decided to request scientific advice when it reviewed the Sanctuary provision in 2004.

Even Japan disagreed with the creation of a Southern Ocean Sanctuary, because *“it believes that the IWC has acted outside the terms of the ICRW, without scientific justification, and it has not taken into account the interest of the consumers of whale products and the whaling industry.”*<sup>30</sup> Nevertheless, Brazil, the UK, Chile, France, Italy, New Zealand, Spain, the USA, and the Netherlands supported the creation of the sanctuary, believing that the Sanctuary was passed by a sufficient majority and was therefore legal. In return, after the plenary was adjourned, the decisions were reversed.

It was at the end of the meeting when Brazil finally came forward with the proposal for the creation of the SAWS. It *“indicated that it will be making a proposal next year (1999) for a South Atlantic Ocean Sanctuary to promote whale-watching, research and conservation. The USA encouraged this action and supported non-consumptive use in the area.”*<sup>31</sup>

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<sup>28</sup> The Humane Society of the United States website. *What is the IWC? – “Who objectstTo the moratorium?”*. ([ht tp: // www.hsus.org/about\\_us/humane\\_society\\_international\\_hsi / international\\_policy/ t r eaties/ international\\_whal ing\\_commission/what\\_is\\_the\\_iwc.html](http://www.hsus.org/about_us/humane_society_international_hsi/international_policy/treaties/international_whaling_commission/what_is_the_iwc.html) )

<sup>29</sup> Antarctic and Southern Ocean Coalition (ASOC) website. *Information – “Intrigue and politics in world of whaling”* (<http://www.asoc.org/media/12.01.04japaniwc.trib.htm>)

<sup>30</sup> *Chair's Report of the 50th Annual Meeting*. IWC. May, 1998. Page 34.

<sup>31</sup> *Chair's Report of the 50th Annual Meeting*. IWC. May, 1998. Page 46.

## 6.2 . 53th Annual Meeting of the IWC (2001)

At the 53th Annual Meeting, hosted in London, Brazil's participation basically consisted of supporting new sanctuary proposals. The most significant point that the Brazilian commission argued was the creation of the SAWS.

Co-Sponsored with Argentina, Brazil, for the first time introduced its proposal for the creation of a SAWS, including a new sub-paragraph in Chapter III of the Schedule. The paragraph presented is as follows:

*"In accordance with Article V(1)(c) of the Convention, commercial whaling, whether by pelagic operations or from land stations, is prohibited in a region designated as the South Atlantic Whale Sanctuary. This Sanctuary comprises the waters of the South Atlantic Ocean enclosed by the following line: starting from the Equator, then generally south following the eastern coastline of South America to the coast of Tierra del Fuego and, starting from a point situated at Lat 55°07,3'S Long 066°25,0'W; thence to the point Lat 55°11,0'S Long 066°04,7'W; thence to the point Lat 55°22,9'S Long 065°43,6'W; thence due South to Parallel 56°22,8'S; thence to the point Lat 56°22,8'S Long 067°16,0'W; thence due South, along the Cape Horn Meridian, to 60°S, where it reaches the boundary of the Southern Ocean Sanctuary; thence due east following the boundaries of this Sanctuary to the point where it reaches the boundary of the Indian Ocean Sanctuary at 40°S; thence due north following the boundary of this Sanctuary until it reaches the coast of South Africa; thence it follows the coastline of Africa to the west and north until it reaches the Equator; thence due west to the coast of Brazil, closing the perimeter at the starting point. This prohibition shall be reviewed twenty years after its initial adoption and at succeeding ten-year intervals, and could be revised at such times by the Commission. Nothing in this sub-paragraph shall prejudice the sovereign rights of coastal states according to, inter alia, the United Nations Convention on the Law of the Sea."<sup>32</sup> (emphasis ours).*

After that, Brazil showed why it was so concerned about the whaling situation, and was proud of all efforts made by the Brazilian government since 1997, and its progress on whale preservation. Brazil's final statement concerning the creation of a SAWS was that *"the establishment of a further sanctuary in the Southern Hemisphere would ensure that entire populations of whales are adequately conserved and that co-operative research would be fostered on a large scale"*.<sup>33</sup>

The scientific committee showed no consensus on the proposal; and Australia, Austria, the USA, Chile, France, New Zealand, Germany, the Netherlands, Monaco, the UK, Sweden, Italy, Finland and Spain supported the proposed SAWS.

Nevertheless, "the proposal received 19 votes in favor, 13 against and 5 abstentions. It did not achieve the required three-quarters majority and was therefore not adopted"<sup>34</sup> (emphasis ours). Brazil thanked the IWC for the votes, and stated that it would continue with its way to create the sanctuary.

## 6.3 . 54th Annual Meeting of the IWC (2002)

Like the previous meeting, Brazil's participation at the 54th Annual Meeting was very significant in the proposal for the creation of the SAWS. The inclusion of a new paragraph (the same as referred to above) in the Schedule was presented one more time and voted on.

Again, the three-fold primary objectives of the sanctuary were presented as follows:

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<sup>32</sup> *Chair's Report of the 53th Annual Meeting*. IWC. July, 2001. Page 32.

<sup>33</sup> *Idem, ibidem*

<sup>34</sup> *Chair's Report of the 53th Annual Meeting*. IWC. July, 2001. Page 33.

*“(1) to stimulate research in the region, particularly by developing countries aimed at inter alia monitoring the recovery of species, analyzing environmental threats (e.g . contamination from coastal activities) and improving understanding of migratory routes and movements; (2) to promote the conservation of large whales in breeding, calving, and for some species, feeding areas; (3) to develop the sustainable and non-lethal economic use of whales for the benefit of coastal communities in the region through ecotourism, particularly whale- watching.”<sup>35</sup>*

Argentina, co-sponsor with Brazil on the SAWS, considered that the sanctuary would also:

*“(1) assist the recovery of whale populations and protect biodiversity by protecting whales in their natural breeding grounds as well as in their migratory routes; (2) promote research on depleted whale stocks and their habitats; and (3) promote modern educational activities and the development of environmentally-friendly tourism activities in the region.”<sup>36</sup>*

As requested in the previous meeting, and also by Switzerland, Brazil showed that some African countries with coasts on the Atlantic Ocean showed appreciation for the SAWS. South Africa, just like Argentina, once more confirmed its continued support for the sanctuary.

Nevertheless, when put to a vote, the SAWS did not receive a three-quarter majority vote and once more was not adopted. There were 23 votes in favor, 18 against and 4 abstentions.

#### **6.4. 55th Annual Meeting of the IWC (2003)**

In the 55th Annual Meeting, Brazilian participation consisted firstly in supporting New Zealand and Australia in the proposal for the creation of a South Pacific Whale Sanctuary.

Concerning the creation of the SAWS, Brazil, jointly co-sponsored by Argentina, South Africa, and others, again proposed the inclusion of a new paragraph to the Schedule. The referred-to paragraph is the same as described in item 6.3 above, and was once more voted on by the Commission.

Brazil argued that the history of whaling was *“one of the saddest examples of the violation of the sustainability principle (...). ... whaling cause damage to stocks shared by many coastal nations, the profit generated was concentrated in a few developed countries to the great disadvantage of most of the global community”<sup>37</sup>* and thus becoming a socio-economic problem.

In a wide analysis of its concern, Brazil explained that its position against whaling is due to the possibility of a *“wide array of sustainable non-lethal uses such as scientific research, public education and awareness, and the development of whale-watching that brings direct benefits to local communities.”<sup>38</sup>*

Argentina also showed concern about the non-approval of the sanctuary, since the referred-to sanctuary would contribute to *“(1) the recovery of whale populations and the protection of biodiversity; (2) research on depleted stocks and their habitats; (3) the promotion of modern educational activities; and (4) the development of environmentally-friendly tourism activities in its region.”<sup>39</sup>*

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<sup>35</sup> *Chair's Report of the 54th Annual Meeting*. IWC. May, 2002. Page 31.

<sup>36</sup> *Idem, Ibidem*

<sup>37</sup> *Chair's Report of the 55h Annual Meeting*. IWC. Apr, 2003. Page 30.

<sup>38</sup> *Idem, Ibidem*

<sup>39</sup> *Idem, Ibidem*

Afterwards, there was a short discussion in the Scientific Committee. Nevertheless, at the end of the discussion there was no consensus on the ideas, and when it came to a vote, there were 24 votes in support, 19 against, and 3 abstentions. Once more, the three-quarters majority was not reached, and Brazil, after thanking all the co-sponsors, said that it would continue to pursue the establishment of the sanctuary the following year (2004).

#### 6.5. 56th Annual Meeting of the IWC (2004)

Brazilian participation in the 56th Annual Meeting discussion consisted basically of the Revised Management Scheme (RMS), commercial whaling, and the South Atlantic Whale Sanctuary.

Regarding RMS, Brazil alleged that *"it has participated in good faith in the long and difficult discussions on the RMS and had tried to be open and transparent about its two main interests, i.e. . (1) the construction of an adequate foolproof international inspection and observation scheme to prevent recurrence of past abuses and damage caused by legal and illegal whaling operations; and (2) the proper discussion of an agreement to respect the rights of coastal states to appropriate whale resources in a given ocean basin through non-lethal means."*<sup>40</sup>

Further, it was also expressed by Brazil, jointly with Argentina and Peru, *"that the RMS development process has to be more inclusive of geographic diversity, especially countries in the Southern Hemisphere that oppose whaling and are devoted to the conservation of whales."*<sup>41</sup> Moreover, Brazil jointly with Germany, New Zealand, the UK, Australia, Belgium, Monaco, India and Argentina were strongly opposed to linking adoption of an RMS with the lifting of the moratorium. *"Brazil believed that discussions on the lifting of paragraph 10(e) should be considered from a geographical as well as time perspective so as to take account of its position on the right of states to use whale resources non-lethally."*<sup>42</sup>

Relating to the proposal of commercial whaling presented at the IWC, Brazilian understanding was it was one of the most unacceptable provisions inconsistent with the Convention on the Law of the Sea.

On the topic of Sanctuaries, it was quite clear that Brazil was a former supporter, considering them valid from scientific and management aspects. Therefore, it spoke in support of the establishment of a South Pacific Sanctuary and a South Atlantic Whale Sanctuary.

The year of 2004 was the fourth year Brazil, along with Argentina and others, proposed to create the SAWS, noting that *"the proposed sanctuary incorporates environmental, social and scientific issues and takes account of the regional interests of its neighboring nations."*<sup>43</sup> According to it the objective of the sanctuary was to enhance the global effort to establish Marine-Protected Areas for marine mammals and to complement existing IWC whale sanctuaries since after centuries of exploitation, most whale species had had their numbers drastically reduced.

#### 6.6 . 57th Annual Meeting of the IWC (2005)

At the 58th Annual Meeting, Brazilian participation consisted basically in the Revised Management Scheme and South Atlantic Whale Sanctuary.

*"Brazil noted that as a long-standing member of IWC it has always agreed to the needs, and supported the requests of traditional peoples to undertake whaling activities necessary for their subsistence. It further noted that as time has passed, with many of*

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<sup>40</sup> Chair's Report of the 56th Annual Meeting. IWC. Apr, 2004. Page 36.

<sup>41</sup> Chair's Report of the 56th Annual Meeting. IWC. Apr, 2004. Page 37.

<sup>42</sup> Chair's Report of the 56th Annual Meeting. IWC. Apr, 2004. Page 39.

<sup>43</sup> Chair's Report of the 56th Annual Meeting. IWC. Apr, 2004. Page 49.

*these communities becoming less isolated, hunting methods and gear have changed dramatically, leading some to question the actual traditional nature of such hunts. Even with these changes, Brazil has continued to support these peoples' and communities' rights to manage their whale resources as they deem appropriate. However, it now wished to place on record its regret and concern that some governments representing these traditional peoples through their speeches and votes against Brazilian proposals are consistently denying Brazil's local communities of the right to have their whale resources managed non-lethally for their own and their nation's benefit. It could no longer accept that its own coastal people have lesser rights to be heard, recognized and protected than others elsewhere. Brazil therefore invited all IWC members with aboriginal whale hunts and the traditional peoples they represent to consider its concerns and needs as the organization strives to find a common way forward, and hopefully one that does not disregard the rights of local communities only because their appropriation of whale resources does not involve killing.*"<sup>44</sup>

Regarding the RMS, Brazil expressed concern about the difficulty in make progress towards an acceptable RMS. It hoped that the lack of progress

*"is directly related to the unwillingness of whaling countries to accept minimum international standards common in other marine resource management organizations – standards from which IWC could not reasonably expect to be exempted. Brazil believed that discussions to date have largely circumvented some fundamental policy matters of relevance to countries like itself, such as establishing and respecting sanctuaries and recognizing and protecting the rights of coastal states to appropriate whales in a non-lethal way. It was deeply disappointed that no alternative proposals had so far been presented that include possible compromises on accommodating the protection of non-lethal management regimes against the encroachment of pelagic whaling by distant nations in spite of its efforts to participate constructively in several intersessional meetings. Brazil believed that the Commission needed to get back to principles or it would continue to be locked into future drafting exercises. Finally Brazil noted its strong objection to any future intersessional meetings being again held in remote Northern Hemisphere locations. It believed such locations prevent full participation of all interested and especially, developing countries.*"<sup>45</sup>

With regards to the SAWS, Brazil and other co-sponsors again introduced a proposal to create a South Atlantic Whale Sanctuary.

*"Brazil recalled that those against the establishment of sanctuaries frequently cite the provisions of Article V that require amendments to the Schedule to be based on scientific findings and drew attention to the fact that no consensus recommendations have been forthcoming from the Scientific Committee in this respect. Brazil highlighted that the Convention does not specify what kind of scientific findings are necessary and indicated that given the politicized nature of the Scientific Committee itself, it would be impossible for it to reach consensus on sanctuary proposals. Nevertheless, the sponsors of the South Atlantic Sanctuary have consistently submitted their proposal to the Committee for review, hoping that its critics would offer constructive scientific comments. (...) The sanctuary's sponsors continue to be convinced that the proposal is scientifically justified."*<sup>46</sup>

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<sup>44</sup> Chair's Report of the 57th Annual Meeting. IWC. Mar, 2005. Page 24.

<sup>45</sup> Chair's Report of the 57th Annual Meeting. IWC. Mar, 2005. Page 35.

<sup>46</sup> Chair's Report of the 57th Annual Meeting. IWC. Mar, 2005. Page 44.

Additionally, Brazil disagreed with the argument that sanctuaries are incompatible with the development and implementation of an RMS, since the RMS was designed to provide the management regime for whaling with an efficient tool, sanctuaries were intended to provide appropriate protection for the non-lethal management and use of whales.

Moreover, Japan proposed the whaling in order to respect the traditional Japanese coastal whaling culture, but Brazil did not support Japan's proposal stressing that the rights of others to use whale resources in a non-lethal way must be recognized. Regarding Japan, Brazil, along with other countries, had been a consistent opponent of Japan's scientific whaling programs believing that Japan was deliberately attacking a species of great importance when it could study the mammals using non-lethal research.

#### **6.7. 58th Annual Meeting of the IWC (2006)**

Brazil began the 58th Annual Meeting asking why the whaling countries *"refuse to discuss, recognize and negotiate the rights of coastal states to appropriate whale resources non-lethally and whether it is conducive to the negotiating process for a highly-developed nation from the Northern Hemisphere to take whales from the Southern Hemisphere without consultation with range states of those shared resources, as mandated by modern international law."*<sup>47</sup> It believed that it was clear that the depletion of world fishery resources was a result of over-fishing.

Once more, Brazil, jointly with Argentina and South Africa, presented the proposal for a South Atlantic Whale Sanctuary, making clear that the goal of the sanctuary was to promote and consolidate a non-lethal management regime for cetacean resources. *"It highlighted that further scientific findings and socio-economic reality prove that the non-lethal management option can be of great benefit to the peoples in the region, thereby justifying the proposal in management terms and also noted that the parties to the Convention on Biological Diversity embrace non-lethal uses of resources, and that ensuring protection of coastal nations' rights to non-lethal uses is important."*<sup>48</sup>

Brazil emphasized that the SAWS would be in accordance with the precautionary principle as described in Principle 15 of the 1992 UNCED Rio Declaration that was fully consistent with UNCLOS Article 194 stipulating measures to protect rare and fragile ecosystems as well as the habitat of depleted, threatened or endangered species.

Additionally, Brazil stated that Japan was abusing its rights under Article VIII of the Convention and disagreed with Japan's programs due to the lack of scientific justification, *"believing them to be political manipulation of the Convention to slow negotiations."*<sup>49</sup> Furthermore, Australia reputed it was too simplistic of an approach to developing an ecosystem model as described in Japan's presentation. Brazil shared Australia's concerns, believing the 'whales eat fish' argument was too simplistic and that it could not be accepted by any serious scientific body.

#### **6.8. 59th Annual Meeting of the IWC (2007)**

Brazilian participation at the 2007 59th Annual Meeting was almost exclusively dedicated to the propaganda of the SAWS creation.

With the support of the "The South Atlantic: A Sanctuary For Whales" study presented in 2005, Brazil once more, along with other countries, proposed its intention of creating a sanctuary in the South Atlantic.

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<sup>47</sup> *Chair's Report of the 58th Annual Meeting.* IWC. Jan, 2006. Page 33.

<sup>48</sup> *Chair's Report of the 58th Annual Meeting.* IWC. Jan, 2006. Page 34.

<sup>49</sup> *Chair's Report of the 58th Annual Meeting.* IWC. Jan, 2006. Page 44.

However, the proposal “did not receive the required three-quarter majority support to be adopted (39 votes in favor, 29 against and 3 abstentions).”<sup>50</sup>

**Note that since the first time the SAWS was proposed, in 2001, its adherence became more relevant each time.**

## 7. LAST CONSIDERATIONS

### 7.1 . Whales Are Not Fish

*“Whales are mammals, not fish, but they have historically been treated as fish by the whaling industry.*

*The vast majority of fish species reproduce by releasing huge quantities of eggs into the water for fertilization by the male, although under normal conditions only a small percentage of these will develop into mature adults. Whales, on the other hand, have a long gestation period and usually give birth only every one or two year, to a single calf that requires more than a year of maternal care before it can survive on its own. Even then, whale calves take many years to reach maturity. For these reasons whales can never recover quickly from exploitation.*

*These factors are compounded by our lack of knowledge about many aspects of whale biology. Even after decades of research, the growth rate of whale populations is unknown because of the difficulty of studying these highly migratory, long-lived, slow reproducing animals. Nor are there reliable estimates of live birth rates or of the natural mortality rates of calves and juveniles.*

*Fishing industry representatives who stir up concern that a ban on whaling would lead to a ban on fishing are deliberately confusing the public and disregarding the vastly different characteristics of two entirely unrelated groups of species.”<sup>51</sup>*

### 7.2. Whales Cannot Be Counted Accurately

*“Modern scientific methods cannot count whales accurately. Determining how many animals exist in a population is crucial for any calculation of kill quotas. The size of most populations of whales is known no more accurately than plus or minus 50 percent. Since populations change so slowly, it is impossible to tell if a population is growing or shrinking in the course of a few years study.*

*All population estimates are based on a count of the whales sighted on each side of a survey vessel as it zigzags its way through a designated stretch of water. Since only a small percentage of the whales in any given population will be visible on the surface as the vessel passes, extrapolations must be made from the number sighted to give an estimate for the entire region under study. Thus all population estimates are based on sightings of a tiny fraction of the population.*

*Mathematical formulas are used to calculate the total number of whales from the small number of actual sightings. These formulas attempt to take into account numerous*

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<sup>50</sup> Chair's Summary Report of the 59th Annual Meeting. IWC. May, 2007. Page 04.

<sup>51</sup> Greenpeace (archive) website. *The case against whaling.* (<http://archive.greenpeace.org/comms/cbio/case.html> )

*variables. It is in these formulas that an enormous potential for compounded error exists.*<sup>52</sup>

### 7.3 . Sustainable Whaling:

*“Common sense would seem to suggest that because whale populations grow very slowly, it would be in the long-term interests of the whaling industry to maintain whale populations at a healthy level, and to avoid over-exploitation that might lead to a terminal decline.*

*But mathematician Colin Clark showed, in a classic paper called “The Economics of Overexploitation” published in the journal Science in the early 1970s, that exploitation of slow-growing populations will naturally lead to their severe depletion and even to their extinction. This is because if the profit to be had from catching the entire population of animals at once is greater than the profit that could be made by conserving the population and taking only a certain quantity each year, then it is good business to catch as many animals as possible, as quickly as possible - even though it is bad management from the biological point of view.*

*Economic logic, divorced from the realities of the living world, dictates that high levels of short-term exploitation will bring the best financial return. In other words, sustainable whaling is economically unsound.*<sup>53</sup>

### 7.4 . Sustainable Utilization

What exactly does “sustainable utilization” mean? “The most ready analogy is that of a pensioner whose sole asset is a capital sum invested in a bank. Sustainable utilization for him means living off the annual interest without dipping into the capital. In other words, harvesting only the natural annual growth of a population, without depleting it to a low level where this growth is greatly reduced.”<sup>54</sup>

### 7.5 . Killing More Whales Will Not Restore the Ecological Balance

*“Japan has been used the argument that the whales should be killed to protect the remaining fish. In fact, whales are far from being the only consumers of fish, huge quantities are eaten by other fish and by seabirds. In any case, killing a whale does not release the fish that it would have eaten to a commercially valuable fish. It is just as lightly to be eaten by another species altogether. There is not a single case world wide where it has been demonstrated that a catch of whales has increased the take of commercially valuable fish.”*<sup>55</sup>

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<sup>52</sup> *Idem, Ibidem.*

<sup>53</sup> *Idem, Ibidem.*

<sup>54</sup> BUTTERWORTH, Douglas (Department of Applied Mathematics University of Cape Town - South Africa). *Sustainable Utilisation of Marine Mammal Resources*. High North Alliance. (1995).

<sup>55</sup> Greenpeace (archive) website. *The case against whaling*. (<http://archive.greenpeace.org/comms/cbio/case.html> )

## 8. CONCLUSION

Since long ago commercial whaling has been practiced around the world without limits, making the situation critical mainly after the whaling activities have acquired industrial characteristics.

In trying to figure out the unbearable state, the world wanted to regulate; it was then, in 1946, the International Whaling Commission was established under the International Convention for the Regulation of Whaling.

Aiming to recover some whaling stocks which were in danger of extinction, the IWC in 1986 adopted a moratorium on all commercial whaling. It is here that differences among member nations started to appear.

It is possible to realize that the objective established by the ICRW portrayed as *“to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry”* is used as argument for both sides: pro-whaling and anti-whaling countries.

Also, it is clear how culture biases the fulfillment of the Convention mainly regarding the moratorium. As it was said, in particular Japan, Norway and Iceland do not have the intention to exterminate whale species, but whaling itself is inserted completely in the culture, society habits and in the daily food.

Therefore, it is truly difficult to answer accurately if the aforementioned text means that for abundant species whaling should be permitted if it is sustainable because the same fundamental argument supports opinions on both sides of the topic. However, it can be said that notably, with the moratorium adoption and the maintenance of it, the IWC assumed a position more anti-whaling than pro-whaling.

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